

AMENDED IN SENATE APRIL 1, 2008

SENATE BILL

No. 1574

Introduced by Senator Florez
(Coauthor: Senator Ducheny)

February 22, 2008

An act to add Division 24 (commencing with Section 81000) to the Food and Agricultural Code, relating to ~~biodiesel~~ biomass-based diesel.

LEGISLATIVE COUNSEL'S DIGEST

SB 1574, as amended, Florez. ~~Biodiesel~~ *Biomass-based diesel*: commission.

Existing law establishes various commissions to promote agricultural products from the state.

~~This bill would make findings and declarations regarding the production of biodiesel in this state, and state the intent of the Legislature to enact legislation to establish a Biodiesel Commission to administer promotional programs for biodiesel production in this state, and to assist with the promotion, production, marketing research, quality standards, and dissemination of production information regarding biodiesel fuel in this state.~~

This bill would establish within state government the California Biomass-based Diesel Commission, comprised of handlers and producers of biomass-based diesel. The commission would be charged with specified powers, duties, and responsibilities, including the promotion of the sale of renewable biomass-based diesel by advertising for the purpose of maintaining and expanding markets for renewable biomass-based diesel. The bill would provide for the imposition of an assessment rate to defray operating costs of the commission, an annual budget, and other provisions related to implementation.

The bill would authorize the Secretary of the Department of Food and Agriculture to require the commission to correct or cease activities or functions determined not to be in the public interest or to be in violation of those provisions, in accordance with specified procedures. The bill would also require the secretary, within 15 days of a request from any handler or producer, to establish a list of handlers and producers eligible to vote on implementation of those provisions regarding the commission, which would not become operative until a determination by the secretary that the provisions have been approved by a referendum vote of handlers and producers, as specified. The bill would also set forth related legislative findings.

Existing law provides that any violation of a provision of the Food and Agricultural Code is a misdemeanor, unless a different penalty is expressly provided.

This bill would make it a crime for a person to willfully render or furnish a false report statement, or record or to fail to render or furnish a report, statement, or record required by the commission. By creating new crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares the
- 2 following:
- 3 (1) ~~Biodiesel~~-*Biomass-based diesel* produced in this state
- 4 constitutes one of the state's principal alternative fuels. The
- 5 ~~biodiesel~~ *biomass-based diesel* industry in this state is expanding.
- 6 The industry constitutes an important source of jobs for many
- 7 people in the state, and provides an environmental benefit by
- 8 producing alternative fuel, resulting in cleaner air for Californians.
- 9 (2) As an emerging product in alternative fuels, ~~biodiesel~~
- 10 *biomass-based diesel* is not heavily used by many of California's
- 11 citizens. Opportunity exists for continued growth and expansion

of the industry, by creating new markets for this fuel. The success of creating new markets is uniquely dependent upon effective advertising, promotion, collection, and dissemination of public information. The creation of new markets is essentially a matter of educating and informing people of the use, environmental benefits, and availability of a previously unknown or unrecognized alternative fuel.

(3) The establishment of a commission for—~~biodiesel~~ *biomass-based diesel* is imperative for efficient development and management of a national and international advertising program that will ensure that the California ~~biodiesel~~ *biomass-based diesel* industry can compete successfully in the marketplace and increase revenues to ~~biodiesel~~ *biomass-based diesel* producers.

(4) The production and marketing of ~~biodiesel~~ *biomass-based diesel* produced in this state is hereby declared to be a matter of public interest.

(b) It is the intent of the Legislature to enact legislation to establish—~~a Biodiesel~~ *the California Renewable Biomass-based Diesel* Commission to administer promotional programs for ~~biodiesel~~ *biomass-based diesel* production in this state, and to assist with the promotion, production, marketing research, quality standards, and dissemination of production information regarding ~~biodiesel~~ *biomass-based diesel* fuel in this state.

SEC. 2. *Division 24 (commencing with Section 81000) is added to the Food and Agricultural Code, to read:*

DIVISION 24. RENEWABLE BIOMASS-BASED DIESEL

Article 1. General Provisions

81000. *Renewable biomass-based diesel produced in California constitutes one of the state's principal alternative fuel markets. The renewable biomass-based diesel industry in this state is expanding and will constitute an important source of jobs for many people in California, and provide an environmental benefit by producing alternative fuel resulting in cleaner air.*

81001. *As an emerging market in alternative fuels, renewable biomass-based diesel is not heavily used by California's citizens, but opportunity exists for growth and expansion of the industry, by creating new markets. The success of such an expansion*

1 *program is uniquely dependent upon the activities authorized in*
2 *this division, since the creation of new markets is essentially a*
3 *matter of educating and informing people of the use, environmental*
4 *benefits, and availability of a previously unknown or unrecognized*
5 *alternative fuel.*

6 *81002. The establishment of a commission is imperative for*
7 *the efficient development and management of a national and*
8 *international advertising program that will ensure that the*
9 *California renewable biomass-based diesel industry can compete*
10 *successfully in the marketplace and increase revenues to*
11 *biomass-based diesel producers.*

12 *81003. The production and marketing of renewable*
13 *biomass-based diesel produced in this state is hereby declared to*
14 *be of the public interest. The provisions of this division are enacted*
15 *in the exercise of the police power of this state for the purpose of*
16 *protecting the health, peace, safety, and general welfare of the*
17 *people of this state.*

18 *81004. The commission form of administration created by this*
19 *division is uniquely situated to provide those engaged in the*
20 *production of renewable biomass-based diesel with the opportunity*
21 *to avail themselves of the benefits of collective action in the broad*
22 *fields of advertising; promotion; production and marketing*
23 *research; quality standards; collection and dissemination of*
24 *production volume and related statistics; and public education.*

25 *81005. No action taken by the commission, or by any person*
26 *in accordance with this division or with rules or regulations*
27 *adopted under this division, is a violation of the Cartwright Act*
28 *(Chapter 2 (commencing with Section 16700) of Part 2 of Division*
29 *7 of the Business and Professions Code), the Unfair Practices Act*
30 *(Chapter 4 (commencing with Section 17000) of Part 2 of Division*
31 *7 of the Business and Professions Code), or any statutory or*
32 *common law against monopolies or combinations in restraint of*
33 *trade.*

34 35 *Article 2. Definitions* 36

37 *81020. Unless the context otherwise requires, the definitions*
38 *in this article govern the construction of this division.*

39 *81021. "Books and records" means books, records, contracts,*
40 *documents, memoranda, papers, correspondence, or other written*

1 *data pertaining to matters relating to the activities subject to this*
2 *division.*

3 81022. “Commission” means the California Renewable
4 Biomass-based Diesel Commission.

5 81023. “District” means ____.

6 81024. “Ex officio member” means a nonvoting member of
7 the commission.

8 81025. “Handle” means to engage in the business of being a
9 handler.

10 81026. “Handler” means any person who is engaged in this
11 state in the business of marketing renewable biomass-based diesel
12 who handles ____ gallons or more of renewable biomass-based
13 diesel during a calendar year. It is the Legislature’s intent that
14 this provision be construed so that every person engaged in the
15 handling of ____ gallons or more of renewable biomass-based
16 diesel produced in California is subject to assessment pursuant to
17 this division.

18 81027. “Market” or “marketing” means to sell renewable
19 biomass-based diesel to a person other than a handler.

20 81028. “Marketing research” means any research relating to
21 the sale of renewable biomass-based diesel.

22 81029. “Person” means any individual, partnership, limited
23 liability partnership, corporation, limited liability corporation,
24 firm, company, or other entity doing business in California.

25 81030. “Producer” means any person who produces, or causes
26 to be produced, renewable biomass-based diesel in California.

27 81031. “Production research” means any research relating
28 to the production of renewable biomass-based diesel.

29 81032. “Public member” means the person appointed by the
30 commission pursuant to Section 81050. The public member and
31 his or her alternate shall not have any financial interest in the
32 production or handling of renewable biomass-based diesel.

33 81033. “Renewable biomass-based diesel” means ____.

34 81034. “Secretary” means the Secretary of Food and
35 Agriculture.

36 81035. “Sell” means to transfer or cause the transfer of title
37 of renewable biomass-based diesel for valuable consideration.

Article 3. California Renewable Biomass-based Diesel
Commission

81050. (a) There is in the state government the California Renewable Biomass-based Diesel Commission. The commission is composed of handler members and producer members as set forth in this section. In addition, there may be one public member.

(b) Each eligible producer shall appoint one member and one alternate member annually.

(c) Handler members and alternate members shall be elected by district. Each district shall have at least one representative.

(d) No handler who is more than 90 days delinquent in the payment of assessments or filing of reports required pursuant to this division is eligible to serve on the commission. No member who is the sole representative of a district is ineligible to serve as a result of the operation of this subdivision.

(e) Members who are ineligible to serve by operation of law pursuant to subdivision (d) shall be immediately disqualified from voting on matters before the commission.

The eligibility of handler members shall be reinstated at the first meeting after the handler's payments and reports are made current.

(f) The commission shall annually establish the number of eligible producer members of the commission based on the volume of renewable biomass-based diesel produced in the immediately preceding calendar year; and, if necessary, adjust the number of members. Any producer who does not appoint a member and alternate within 15 days of being notified of his or her eligibility shall be deemed to have waived his or her right to a seat for the then current calendar year and shall not be counted in the calculation of producer seats. Any waiver shall not affect the responsibility of the producer to pay the assessments required by Section 81121.

(g) The public member, if any, shall be appointed to the commission by the secretary from the nominees recommended by the commission.

81051. (a) The secretary may require the commission to correct or cease any existing activity or function that is determined by the secretary not to be in the public interest or that is in violation of this division.

1 (b) If the commission refuses or fails to cease those activities
2 or functions or to make the corrections as required by the
3 secretary, the secretary may, upon written notice, suspend all or
4 a portion of the activities or functions of the commission until the
5 time that the cessation or correction of activities or functions has
6 been accomplished by the commission.

7 (c) Actions of the commission in violation of the written notice
8 are without legal force or effect. The secretary, to the extent
9 feasible, shall issue the written notice prior to the commission
10 entering into any contractual relationship affecting the existing
11 or proposed activities or functions that are the subject of the
12 written notice.

13 (d) Upon service of the written notice, the secretary shall notify
14 the commission in writing of the specific acts that the secretary
15 determines are not in the public interest or are in violation of this
16 division, his or her reasons for requiring a cessation or correction
17 of specific existing or proposed activities or functions, and
18 recommendations that will make the activities or functions
19 acceptable.

20 81052. When the secretary is required to concur in a decision
21 of the commission, the secretary shall give his or her response to
22 the commission within 15 working days from notification of the
23 decision. The secretary shall set forth in writing with specificity
24 the reasons for any refusal to concur. The secretary's response
25 may be a requirement that additional information be provided.

26 81053. The commission shall reimburse the secretary for all
27 expenditures incurred by the secretary in carrying out his or her
28 duties and responsibilities pursuant to this division. However, a
29 court may, if it finds that the secretary acted arbitrarily or
30 capriciously in restricting the activities or functions of the
31 commission, relieve the commission of the responsibility for
32 payment of the secretary's legal costs with regard to that action.

33 81054. Except for ex officio members, an alternate for each
34 member shall be appointed in the same manner as the member.
35 An alternate shall, in the absence of the member for whom he or
36 she is an alternate, serve in place of the member and shall have,
37 and be able to exercise, all the rights, privileges, and powers of
38 the member when serving on the commission. In the event of a
39 change in status making a member ineligible to serve, or due to
40 death, removal, resignation, or disqualification of a member, the

1 *alternate shall act as a member of the commission until a qualified*
2 *successor is appointed. The ineligibility of any member pursuant*
3 *to Section 81050 does not create an absence within the meaning*
4 *of this section.*

5 *81055. Any vacancy on the commission occurring by the failure*
6 *of any person elected to the commission as a member or alternate*
7 *to continue in his or her position due to a change in status making*
8 *him or her ineligible to serve, or due to death, removal, or*
9 *resignation, shall be filled by another eligible person for the*
10 *unexpired portion of the term by a majority vote of the remaining*
11 *members of the commission. The person shall fulfill all the*
12 *qualifications set forth in this article as required for the person*
13 *whose office he or she is to occupy. The ineligibility of any handler*
14 *member and concurrent ineligibility of any producer member*
15 *pursuant to Section 81050 shall not create a vacancy within the*
16 *meaning of this section.*

17 *81056. Any vacancy on the commission occurring by the failure*
18 *of the public member to continue in his or her position due to a*
19 *change in status making him or her ineligible to serve, or due to*
20 *death, removal, resignation, or disqualification, may be filled by*
21 *another eligible person for the unexpired portion of the term by*
22 *the secretary from nominees recommended by the commission.*
23 *The person shall fulfill all the qualifications set forth in this article*
24 *as required for the member whose office he or she is to occupy.*

25 *81057. Any producer member and his or her alternate on the*
26 *commission shall be an individual producer or an employee or*
27 *representative of a producer who has a financial interest in*
28 *producing renewable biomass-based diesel or causing renewable*
29 *biomass-based diesel to be produced. The qualifications of*
30 *producer members and their alternates shall be maintained during*
31 *their entire term of office. The absence of both the member and*
32 *alternate at two consecutive meetings shall be grounds for the*
33 *commission to declare the seat vacant.*

34 *81058. Any handler member and his or her alternate on the*
35 *commission shall be an individual handler or an employee or*
36 *representative of a handler who has a financial interest in handling*
37 *renewable biomass-based diesel. The qualifications of handler*
38 *members and their alternates shall be maintained during their*
39 *entire term of office. The absence of both the member and alternate*

1 *at two consecutive meetings shall be grounds for the commission*
2 *to declare the seat vacant.*

3 *81059. Except as otherwise provided in this section, the public*
4 *member and his or her alternate member on the commission shall*
5 *have all the powers, rights, and privileges of any other member*
6 *or alternate, respectively, on the commission. The public member*
7 *and his or her alternate member shall not have a vote on issues*
8 *regarding the assessments established pursuant to Section 81121.*

9 *81060. Producer members shall serve three-year terms and*
10 *until their successors are qualified, except that of the first producer*
11 *members of the commission, one-third shall serve one year;*
12 *one-third shall serve two years, and one-third shall serve three*
13 *years. The determination of the term of each member shall be made*
14 *by lot. Members representing the same district shall draw lots*
15 *among themselves to ensure that terms within a single district are*
16 *not concurrent.*

17 *81061. The commission shall be, and is hereby declared and*
18 *created as, a corporate body. It may sue and be sued regarding*
19 *any matter related to the purposes of this division, and may enter*
20 *into contracts. Copies of its proceedings, records, and acts, when*
21 *authenticated, shall be prima facie evidence of the truth of all*
22 *statements therein.*

23 *81062. A majority of the membership of the commission,*
24 *appointed or elected, shall constitute a quorum of the commission.*
25 *The vote of a majority of the members present at a meeting at*
26 *which there is a quorum constitutes the act of the commission. The*
27 *commission may continue to transact business at a meeting at*
28 *which a quorum is initially present, notwithstanding the withdrawal*
29 *of members, provided any action is approved by the requisite*
30 *majority of the required quorum.*

31 *81063. The secretary or his or her representatives shall be*
32 *notified and may attend each meeting of the commission and any*
33 *committee meetings of the commission. However, the secretary or*
34 *his or her representative is not entitled to attend an executive*
35 *session of the commission or a committee of the commission called*
36 *for the purpose of discussing potential or actual litigation against*
37 *the commission.*

38 *81064. No member or alternate of the commission or member*
39 *of a committee established by the commission who is a nonmember*
40 *of the commission shall receive a salary. Each member of the*

1 *commission and each alternate serving in place of a member,*
2 *except ex officio members who are officers or employees of a public*
3 *agency, and each member of a committee established by the*
4 *commission who is a nonmember of the commission, may receive*
5 *reasonable and necessary traveling expenses and meal allowances*
6 *as approved by the commission for each day spent in actual*
7 *attendance at, or in traveling to and from, meetings of the*
8 *commission or committees of the commission, or on special*
9 *assignment for the commission.*

10 81065. *All funds received by any person from the assessments*
11 *levied under this division or otherwise received by the commission*
12 *shall be deposited in banks that the commission may designate*
13 *and shall be disbursed by order of the commission through an*
14 *agent or agents as it may designate for that purpose. The agent*
15 *or agents shall be bonded by a fidelity bond, executed by a surety*
16 *company authorized to transact business in this state, in favor of*
17 *the commission, in an amount of not less than twenty-five thousand*
18 *dollars (\$25,000).*

19 81066. *The state is not liable for the acts of the commission or*
20 *its contracts. Payments of all claims arising by reason of the*
21 *administration of this division or acts of the commission are limited*
22 *to the funds collected by the commission. No member or alternate*
23 *of the commission, or any employee or agent thereof, is personally*
24 *liable for the contracts of the commission. No member or alternate*
25 *of the commission, or any employee or agent thereof, is responsible*
26 *individually in any way to any other person for errors in judgment,*
27 *mistakes, or other acts, either of commission or omission, as*
28 *principal, agent, or employee, except for his or her own individual*
29 *acts of dishonesty or crime. No member or alternate of the*
30 *commission, or any employee or agent thereof, is responsible*
31 *individually for any act or omission of any other member or*
32 *alternate of the commission, or any employee or agent thereof. No*
33 *member or alternate of the commission, or any employee or agent*
34 *thereof, is liable for the default of any other member or alternate*
35 *of the commission, or any employee or agent thereof.*

36 37 Article 4. Powers and Duties

38
39 81070. *The powers and duties of the commission shall include,*
40 *but are not limited to, all of those contained in this article.*

1 81071. *The commission may adopt and periodically alter,*
2 *rescind, modify, and amend all proper and necessary bylaws, rules,*
3 *regulations, and orders in accordance with commission procedures*
4 *for purposes of carrying out this division, including rules for*
5 *appeals from any bylaw, rule, regulation, operating procedure,*
6 *or order of the commission.*

7 81072. *The commission may administer and enforce this*
8 *division, and may perform all acts and exercise all powers*
9 *incidental to, or in connection with, or deemed reasonably*
10 *necessary.*

11 81073. *The commission may appoint officers, including a*
12 *chairperson, one or more vice chairpersons, and other officers as*
13 *it deems necessary. The officers have the powers and duties*
14 *delegated to them by the commission.*

15 81074. (a) *The commission may employ a person to serve at*
16 *the pleasure of the commission as president and chief executive*
17 *officer of the commission, and other personnel, including legal*
18 *counsel of its choice, necessary to carry out this division. If any*
19 *person employed by the commission engages in any conduct that*
20 *the secretary determines is not in the public interest or that is in*
21 *violation of this division, the secretary shall notify the commission*
22 *of the conduct and request that corrective and, if appropriate,*
23 *disciplinary action, be taken by the commission. If the commission*
24 *fails or refuses to correct the situation or to take disciplinary action*
25 *satisfactory to the secretary, the secretary may suspend or*
26 *discharge the person.*

27 (b) *The commission may retain a management firm or the staff*
28 *from any board, commission, or committee of the state or federal*
29 *government to perform the functions prescribed by this section*
30 *under the direction of the commission.*

31 (c) *If requested by any authorized agent, the commission may*
32 *administer any governmental program related to the renewable*
33 *biomass-based diesel industry.*

34 81075. *The commission may fix the compensation for all*
35 *employees of the commission.*

36 81076. *The commission may appoint committees composed of*
37 *both members and nonmembers of the commission to advise the*
38 *commission in carrying out this division.*

39 81077. *The commission may establish offices and incur*
40 *expenses, enter into any and all contracts and agreements, create*

1 liabilities, develop, own, and control the use of any intellectual
2 property, and borrow funds in advance of receipt of assessments
3 as may be necessary in the opinion of the commission for the
4 proper administration and enforcement of this division and the
5 performance of its duties.

6 81078. The commission shall keep accurate books, records,
7 and accounts of all of its dealings, which shall be subject to an
8 annual audit by an auditing firm selected by the commission with
9 the concurrence of the secretary. A summary of the audit shall be
10 reported to all persons subject to this division, a copy of which
11 shall also be submitted to the department. In addition, the
12 secretary, as he or she determines necessary, may conduct or cause
13 to be conducted a fiscal and compliance audit of the commission.

14 81079. The commission may present facts to, and negotiate
15 with, local, state, federal, and foreign agencies on matters that
16 affect the renewable biomass-based diesel industry.

17 81080. The commission may promote the sale of renewable
18 biomass-based diesel by advertising and any other promotional
19 means, including cost-sharing advertising, for the purpose of
20 maintaining and expanding present markets and creating new and
21 larger intrastate, interstate, and foreign markets for renewable
22 biomass-based diesel, and to educate and instruct the public with
23 respect to the environmental benefits and sustainability of
24 renewable biomass-based diesel.

25 81081. The commission may educate and instruct the wholesale
26 and retail trade with respect to proper methods of handling and
27 selling renewable biomass-based diesel, and conduct consumer
28 surveys and analyses.

29 81082. The commission may conduct, and contract with others
30 to conduct, scientific research, including the study, analysis,
31 dissemination, and accumulation of information obtained from
32 research or elsewhere, respecting production technologies, and
33 the marketing and distribution of renewable biomass-based diesel.
34 The results of any research conducted by or on behalf of the
35 commission may be used by the commission in any way it deems
36 appropriate.

37 81083. The commission may contract to receive and render
38 services in formulating and conducting plans and programs and
39 enter into other contracts or agreements that the commission deems
40 necessary to carry out this division.

1 81084. *The commission may accept contributions of, or match*
2 *private, state, or federal funds, and employ or make contributions*
3 *of funds to other persons or state or federal agencies for purposes*
4 *of promoting, maintaining, and enhancing the renewable*
5 *biomass-based diesel industry.*

6 81085. *The commission may collect information, including,*
7 *but not limited to, industry statistics, and publish and distribute*
8 *without charge, a bulletin or other communication to handlers*
9 *and producers of renewable biomass-based diesel.*

10 81086. *The commission shall establish an assessment rate to*
11 *defray operating costs of the commission.*

12 81087. *The commission shall establish an annual budget*
13 *according to generally accepted accounting practices. The budget*
14 *shall be concurred in by the secretary prior to disbursement of*
15 *funds, except for disbursements made pursuant to Section 81075.*

16 81088. *The commission shall submit to the secretary for his*
17 *or her concurrence an annual statement of contemplated activities*
18 *authorized pursuant to this division.*

19 81089. *(a) The commission and the secretary shall keep*
20 *confidential and shall not disclose, except when required by court*
21 *order after a hearing in a judicial proceeding, all lists in their*
22 *possession of persons subject to this division. However, the*
23 *commission shall establish procedures to provide access to*
24 *communication with other producers and handlers regarding*
25 *noncommercial matters affecting the commission and persons*
26 *subject to its jurisdiction. The access shall not include the actual*
27 *release of the list of the names and addresses of producers and*
28 *handlers in the possession of the commission or the secretary. In*
29 *addition, notwithstanding any other provision of law, all*
30 *proprietary or trade secret information developed or gathered*
31 *pursuant to this division, including, but not limited to, names and*
32 *addresses of handlers, producers, wholesalers, retailers, brokers,*
33 *and shippers; individual quantities produced, handled, shipped,*
34 *bought, or sold; prices paid, and the products of research obtained*
35 *by the commission, or by the department on behalf of the*
36 *commission, from any source is confidential and shall not be*
37 *considered a public record as that term is defined in Section 6252*
38 *of the Government Code.*

39 *(b) Upon receipt of a request for information from a person*
40 *establishing cause for the request, the department shall direct the*

1 *commission to provide the requesting person any record in the*
2 *commission's possession, except that any proprietary information*
3 *shall be removed before disclosure.*

4 *81090. The commission may investigate and prosecute civil*
5 *violations of this division and file complaints with appropriate law*
6 *enforcement agencies or officers for suspected criminal violations*
7 *of this division.*

8 *81091. The commission may appoint any person to serve as*
9 *an ex officio member.*

10
11 *Article 5. Implementation*
12

13 *81100. (a) Within 15 days of a request from any handler or*
14 *producer, the secretary shall establish a list of handlers and*
15 *producers eligible to vote on implementation of this division. The*
16 *secretary may require handlers and producers to submit the names*
17 *and mailing addresses of all producers and handlers. The secretary*
18 *also may require that the information provided include information*
19 *on the volume of renewable biomass-based diesel handled by each*
20 *handler, or produced by each producer or, in the alternative, may*
21 *establish procedures for receiving the information at the time of*
22 *the referendum vote specified in Section 81101. The request for*
23 *the information shall be in writing and shall be filed within 10*
24 *days following receipt of the request.*

25 *(b) Any handler or producer eligible to vote whose name does*
26 *not appear on the appropriate list may have his or her name placed*
27 *on the list by filing with the secretary a signed statement,*
28 *identifying himself or herself as a person eligible to vote. Failure*
29 *to be on the list does not exempt the person from paying*
30 *assessments and does not invalidate any industry votes conducted*
31 *pursuant to this article.*

32 *(c) Any handler or producer eligible to vote may contact those*
33 *on the list regarding the referendum in a form and manner*
34 *prescribed by the secretary if all expenses associated with those*
35 *contacts are paid in advance.*

36 *81101. This division, except as necessary to conduct an*
37 *implementation referendum vote, shall not become operative until*
38 *the secretary finds the following in a referendum vote conducted*
39 *by the secretary:*

1 (a) At least 40 percent of the total number of handlers from the
2 list established by the secretary pursuant to this article participate,
3 and that either of the following occurs:

4 (1) Sixty-five percent of the handlers who voted in the
5 referendum voted in favor of this division, and the handlers so
6 voting handled a majority of the total quantity of renewable
7 biomass-based diesel handled in the preceding calendar year by
8 all of the handlers voting in the referendum.

9 (2) A majority of the handlers who voted in the referendum
10 voted in favor of this division, and the handlers so voting handled
11 65 percent or more of the total quantity of renewable
12 biomass-based diesel handled in the preceding calendar year by
13 all of the handlers voting in the referendum.

14 (b) At least 40 percent of the total number of producers from
15 the list established by the secretary pursuant to this article
16 participate and that either of the following occurs:

17 (1) Sixty-five percent of the producers voting in the referendum
18 voted in favor of this division, and the producers so voting
19 produced a majority of the total quantity of renewable
20 biomass-based diesel produced in the preceding calendar year by
21 all of the producers voting in the referendum.

22 (2) A majority of the producers voting in the referendum voted
23 in favor of this division, and the producers so voting produced 65
24 percent or more of the total quantity of renewable biomass-based
25 diesel produced by all of the producers voting in the referendum.

26 81102. The secretary shall establish a period in which to
27 conduct the referendum, which shall not be less than 10 days or
28 more than 60 days in duration, and may prescribe additional
29 procedures necessary to conduct the referendum. If the initial
30 period established is less than 60 days, the secretary may extend
31 the period. However, the total referendum period may not exceed
32 60 days.

33 81103. Nonreceipt of a ballot by an eligible handler or
34 producer shall not invalidate a referendum.

35 81104. If the secretary finds that a favorable vote has been
36 given as provided in Section 81101, the secretary shall certify and
37 give notice of the favorable vote to all affected handlers and
38 producers whose names and addresses are on file with the
39 secretary.

1 81105. *If the secretary finds that a favorable vote has not been*
2 *given as provided in Section 81101, the secretary shall certify and*
3 *declare all provisions of this division inoperative. The secretary*
4 *may conduct other implementation referendum votes one year or*
5 *more after the previous vote has been taken.*

6 81106. (a) *Prior to the referendum vote conducted by the*
7 *secretary pursuant to this article, the proponents of the commission*
8 *shall deposit with the secretary the amount that the secretary deems*
9 *necessary to defray the expenses of preparing the necessary lists*
10 *and information and conducting the vote.*

11 (b) *Any funds not used in carrying out Section 81101 shall be*
12 *returned to the proponents of the commission who deposited the*
13 *funds with the secretary.*

14 (c) *Upon establishment of the commission, the commission may*
15 *reimburse the proponents of the commission for any funds*
16 *deposited with the secretary that were used in carrying out this*
17 *article, and for any legal expenses and costs incurred in*
18 *establishing the commission.*

19
20 Article 6. Assessments and Penalties
21

22 81120. (a) *The commission shall establish the assessment for*
23 *the calendar year later than September 1 of each year or as soon*
24 *thereafter as is possible. The assessment shall not exceed ____*
25 *dollars (\$____) per gallon for renewable biomass-based diesel*
26 *delivered to handlers. The assessment rate shall be the same for*
27 *handlers and producers.*

28 (b) *An assessment greater than the amount specified in*
29 *subdivision (a) may not be charged unless approved by a majority*
30 *of the commission and by handlers and producers pursuant to*
31 *procedures specified in Section 81101.*

32 81121. (a) *This division does not apply to handlers of less*
33 *than ____ gallons in any calendar year or to renewable*
34 *biomass-based diesel produced only for a producer's personal*
35 *use.*

36 (b) *If at any time during a calendar year the volume handled*
37 *by a handler reaches ____ gallons or more, the handler shall be*
38 *assessed for the initial ____ gallons and any additional volume*
39 *handled during the marketing season. If the assessments on the*

1 initial ____ gallons are paid in the time and manner specified by
2 the commission, the assessments shall not be considered past due.

3 (c) Notwithstanding Section ____, the ____ gallon threshold
4 established pursuant to this division shall remain in effect unless
5 a higher threshold is approved by a majority of the commission
6 and by those handlers remaining eligible under the proposed
7 threshold and producers pursuant to procedures specified in
8 Section 81101.

9 81122. Any person requesting an exemption from this division
10 shall file an affidavit with the commission attesting that he or she
11 is not a handler, as defined in Section 81026, or produces
12 renewable biomass-based diesel only for his or her own use. The
13 affidavit shall contain all the information required by the
14 commission. The commission shall review the affidavit, conduct
15 any additional investigation it deems appropriate, and approve
16 or deny the affidavit.

17 81123. Every person who handles renewable biomass-based
18 diesel in any quantity shall keep a complete and accurate record
19 of all transactions involving the purchase or sale of renewable
20 biomass-based diesel and shall submit the record to the commission
21 in the time and manner specified by the commission. The records
22 shall be in a simple form and contain the information the
23 commission prescribes. The records shall be preserved by the
24 handler for a period of three years and shall be offered and
25 submitted for inspection at any reasonable time upon written
26 demand of the commission or its duly authorized agent.

27 81124. (a) All proprietary information obtained or developed
28 pursuant to this article by the commission or the secretary from
29 any source, including, but not limited to, the names and addresses
30 of producers, is confidential and shall not be disclosed except
31 when required by a court order after a hearing in a judicial
32 proceeding.

33 (b) Information on volume shipments, production value, and
34 any other related information required for reports to governmental
35 agencies, financial reports to the commission, or aggregate sales
36 and inventory information, and any other information that gives
37 only totals, but excludes individual information, may be disclosed
38 by the commission.

39 81125. Any assessment that is levied as provided for in this
40 division is a personal debt of every person assessed.

1 81126. Only the first handler of renewable biomass-based
2 diesel is subject to the handler assessment and shall deduct the
3 producer assessment from amounts paid by him or her to the
4 producer and shall be a trustee of these assessments and
5 assessments required to be paid by the handler until they are paid
6 to the commission at the time and in the manner prescribed by the
7 commission. Title to the assessments shall pass immediately to the
8 commission and handlers shall hold the assessments in trust for
9 the benefit of the commission and shall remit them, with assessment
10 reports, in the time and manner specified by the commission. All
11 first handlers, without regard to the volume handled, shall deduct
12 and remit the producer assessment. Failure to collect the
13 assessment from any producer shall not exempt the handler from
14 liability. In addition, failure of a handler to remit the collected
15 producer assessments to the commission shall not relieve the
16 producer of this obligation.

17 81127. When the handler or producer is a corporation, all of
18 the directors and officers of the corporation in their capacity as
19 individuals shall be included, and any liability for violating this
20 division, including, but not limited to, failing to pay assessments
21 or file required reports, shall also include identical liability upon
22 each director or officer of the corporation.

23 81128. Any person who fails to file a return or pay any
24 assessment within the time required by the commission shall pay
25 to the commission a penalty of 10 percent of the amount of the
26 assessment determined to be due, and, in addition, shall pay 1 1/2
27 percent interest per month on the unpaid balance.

28 81129. In addition to any other penalty imposed, the
29 commission may require any person who fails to pay an assessment
30 or related charge pursuant to this article to furnish and maintain
31 a surety bond in a form and an amount, and for a period of time,
32 specified by the commission as assurance that all payments to the
33 commission will be made when due.

34 81130. It is a violation of state law for any person to do any
35 of the following:

36 (a) Willfully render or furnish a false report, statement, or
37 record required by the commission.

38 (b) Fail to render or furnish a report, statement, or record
39 required by the commission.

1 (c) *Secrete, destroy, or alter records required to be kept under*
2 *this division.*

3 81131. *The commission shall establish procedures for the*
4 *purpose of according individuals aggrieved by its actions or*
5 *determinations an informal hearing before the commission or*
6 *before a committee of the commission designated for that purpose.*
7 *Appeals from decisions of the commission may be made to the*
8 *secretary. The determination of the secretary shall be subject to*
9 *judicial review upon petition filed with the appropriate superior*
10 *court.*

11 81132. (a) *The commission may commence civil actions and*
12 *utilize all remedies provided in law or equity for the collection of*
13 *assessments and civil penalties and for the obtaining of injunctive*
14 *relief or specific performance regarding this division and the*
15 *regulations adopted pursuant to this division. A court shall issue*
16 *to the commission any requested writ of attachment or injunctive*
17 *relief upon a prima facie showing by verified complaint that a*
18 *named defendant has violated this division or any other regulation*
19 *of the commission, including, but not limited to, the nonpayment*
20 *of assessments. No bond shall be required to be posted by the*
21 *commission as a condition for the issuance of any writ of*
22 *attachment or injunctive relief.*

23 (b) *A writ of attachment shall be issued pursuant to Chapter 5*
24 *(commencing with Section 485.010) of Title 6.5 of Part 2 of the*
25 *Code of Civil Procedure, except that the showing specified in*
26 *Section 485.010 of the Code of Civil Procedure is not required.*
27 *Injunctive relief shall be issued pursuant to Chapter 3 (commencing*
28 *with Section 525) of Title 7 of Part 2 of the Code of Civil*
29 *Procedure, except that the showing of irreparable harm or*
30 *inadequate remedy at law specified in Sections 526 and 527 of the*
31 *Code of Civil Procedure is not required.*

32 (c) *Upon entry of any final judgment on behalf of the commission*
33 *against any defendant, the court shall enjoin the defendant from*
34 *conducting any type of business regarding biomass-based diesel*
35 *until there is full compliance and satisfaction of the judgment.*
36 *Upon a favorable judgment for the commission, it shall be entitled*
37 *to receive reimbursement for any reasonable attorney's fees and*
38 *other actual related costs. Venue for these actions may be*
39 *established at the domicile or place of business of the defendant*

1 or in the county of the principal office of the commission. The
2 commission may be sued only in the county of its principal office.

3 81133. Any action by the commission for any violation of this
4 division shall be commenced within two years from the date of
5 discovery of the alleged violation. Any action against the
6 commission by any person shall be commenced within two years
7 from the date of the act of which the person complains.

8 81134. The termination of this division shall not affect or waive
9 any right, duty, obligation, or liability that has arisen or that may
10 thereafter arise in connection with this division, release or
11 extinguish any violation of this division, or affect or impair any
12 right or remedies of the commission with respect to any violation.

13 81135. (a) Every five years, commencing with the fifth calendar
14 year following the certification pursuant to Section 81104, the
15 secretary shall conduct a referendum among handlers and
16 producers. The operations of the commission shall continue unless
17 the secretary determines from the referendum that a majority of
18 the eligible handlers and a majority of the eligible producers voting
19 in the referendum voted in favor of terminating the operations of
20 this division.

21 (b) If the secretary finds that the vote favors continuation, he
22 or she shall so certify and this division shall remain operative. If
23 the secretary finds that the vote favors termination, he or she shall
24 so certify and declare the operation of this division and the
25 commission suspended upon the expiration of the then current
26 marketing season. Thereupon, the operations of the commission
27 shall be concluded and funds distributed as provided in Section
28 81137.

29 81136. (a) Upon a finding by a two-thirds vote of the
30 membership of the commission that the operation of this division
31 has not tended to effectuate its declared purposes, the commission
32 may recommend to the secretary that the operation of this division
33 be suspended. However, any suspension shall not become effective
34 until the expiration of the then current calendar year.

35 (b) Upon the vote of the members of the commission specified
36 in subdivision (a), the secretary shall establish a referendum
37 period, which shall not be less than 10 days or more than 60 days
38 in duration. The secretary may prescribe additional procedures
39 as may be necessary to conduct the referendum. At the close of
40 the established referendum period, the secretary shall tabulate the

1 *ballots filed during the period. The secretary shall suspend the*
2 *operation of this division if he or she finds any of the following*
3 *has occurred:*

4 *(1) Sixty-five percent or more of the handlers who voted in the*
5 *referendum voted in favor of suspension, and the handlers so voting*
6 *handled a majority of the total quantity of renewable*
7 *biomass-based diesel handled in the preceding calendar year by*
8 *all of the handlers voting in the referendum.*

9 *(2) A majority of the handlers who voted in the referendum*
10 *voted in favor of suspension, and the handlers so voting handled*
11 *65 percent or more of the total quantity of renewable*
12 *biomass-based diesel handled in the preceding calendar year by*
13 *all of the handlers voting in the referendum.*

14 *(3) Sixty-five percent or more of the producers who voted in the*
15 *referendum voted in favor of suspension, and the producers so*
16 *voting produced a majority of the total quantity of renewable*
17 *biomass-based diesel produced in the preceding marketing season*
18 *by all of the producers voting in the referendum.*

19 *(4) A majority of the producers who voted in the referendum*
20 *voted in favor of suspension, and the producers so voting produced*
21 *65 percent or more of the total quantity of renewable*
22 *biomass-based diesel produced in the preceding marketing season*
23 *by all of the producers voting in the referendum.*

24 *81137. After the effective date of suspension of this division,*
25 *the operation of the commission shall be concluded and all moneys*
26 *held by the commission not required to defray the expenses of*
27 *concluding and terminating operations of the commission shall*
28 *be returned on a pro rata basis to all persons from whom*
29 *assessments were collected in the immediately preceding marketing*
30 *season. However, if the commission finds that the amounts*
31 *returnable are so small as to make impractical the computation*
32 *and remitting of the prorated refund to these persons, any funds*
33 *remaining after payment of all expenses of winding up and*
34 *terminating operations shall be withdrawn from the approved*
35 *depository and paid into an appropriate state or federal program*
36 *conducted or used to fund activities related to the subject matter*
37 *of this division. Upon suspension, any intellectual property owned*
38 *by the commission shall be transferred without charge to the*
39 *secretary who shall hold the property in trust for the benefit of*
40 *California's renewable biomass-based diesel industry. The*

1 *property shall be transferred without charge to any successor*
2 *program serving purposes similar to the purposes of this division.*
3 *81138. Upon suspension of the operation of this division, the*
4 *commission shall mail a copy of the notice of suspension to all*
5 *eligible persons affected by the suspension whose names and*
6 *addresses are on file.*

7 *SEC. 3. No reimbursement is required by this act pursuant to*
8 *Section 6 of Article XIII B of the California Constitution because*
9 *the only costs that may be incurred by a local agency or school*
10 *district will be incurred because this act creates a new crime or*
11 *infraction, eliminates a crime or infraction, or changes the penalty*
12 *for a crime or infraction, within the meaning of Section 17556 of*
13 *the Government Code, or changes the definition of a crime within*
14 *the meaning of Section 6 of Article XIII B of the California*
15 *Constitution.*